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The Educational Value of a Legal Clinic—Some Doubts and Queries

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It is with some reluctance that I appear this morning as the devil's advocate in this meeting of supporters of the legal aid clinic idea. This is the more true since I have had no first-hand acquaintance with the operation of a legal aid clinic in a law school. There are, however, legitimate doubts and queries which it obviously was the purpose of the makers of this program to have expressed. I am willing to be the vehicle through which these are brought into the discussion. One's lack of first-hand experience, moreover, is not so serious a handicap since the publication of Professor Bradway's Handbook of the Legal Aid Clinic Course, which has just appeared in its second edition.[1] In what I shall say regarding the operation of a legal aid clinic within a law school, I shall be largely guided by the information contained in that valuable manual.

The issue here this morning obviously is not the substitution of clinical law schools for the type which now prevails in the United States.[2] It is, rather, the introduction into the legal curriculum as we now know it of a special course in the legal aid clinic, making use as laboratory material of actual cases which are brought to the clinic by clients. Such clinics are, of course, now in operation in a considerable number of American law schools.

No objector to the introduction of legal clinics into present-day law schools would for a moment deny the educational value of experience in the actual practice of law. On the contrary everyone is agreed that such experience is essential to the complete training of a lawyer. The question simply is whether this experience can best be obtained

[1] 1936. p. 337, mimeographed.

[2] Frank, Why Not a Clinical-Lawyer School? (1933), 81 U. Pa. L. Rev. 907; Gardner, Why Not a Clinical-Lawyer School?—Some Reflections (1934), 82 U. Pa. L. Rev. 785.

in a legal clinic contemporaneously with the academic study of law, or whether it can be afforded better during an apprenticeship period following upon the years of academic instruction and of research.

Whether actual experience in the practice of law is to accompany or follow the study of law, there is no reason to doubt the superiority of clinics over private law offices for educational purposes, at least in the great majority of instances. As revealed in Professor Bradway's Handbook, the legal aid clinic has at least the following advantages:

1. Clearly formulated educational objectives;
2. Conscious allotment of work to students in the light of these objectives;
3. Definite development of student initiative and responsibility; and
4. Constant discussional accompaniment, in the classroom and in conference, to the conduct of cases.

Nor are these advantages confined to the small clinic such as that at Duke University, which is entirely a law school enterprise. As Professor David has shown in a recent article,[3] the same advantages may be afforded in conjunction with a clinic which operates in a large metropolitan community and which handles far more cases than the students can take care of. So far as the speaker is concerned, the clinic has demonstrated its place in the education of the lawyer, except in those instances in which well-rounded training can be had in a law office which has the apprentice's interest at heart.

Our doubts and queries, then, have to do solely with the introduction of clinical instruction into the legal curriculum as at present organized. Legal education, of course, is training for the practice of an art.[4] This is true whether the art be thought of as legal statesmanship or as client-caretaking. Fundamental to the practice of the art is knowledge of the world and of the relation of legal institutions to it. The question is, wherein does the legal clinic contribute to the acquisition of such knowledge and to its application, and how far does it interfere with other necessary elements in the training of lawyers? The practice of the art involves, as Professor Bradway insists, the synthesis of legal knowledge and skill in the pursuit of definite objectives in the actual world. The legal aid clinic, of course, offers a means of effecting this synthesis on a small scale. One may question, however, whether the clinic or any other "practical" device can accomplish this synthesis satisfactorily until a more fundamental deficiency in American legal education has been remedied. One may doubt, also, whether the clinic, as a part of the regular law school curriculum, may not be an impediment rather than an aid to more fundamental reform.

Despite a number of prophetic utterances[5] and some genuinely progressive developments, American legal education still proceeds largely along the lines of the traditional case method. The available means for bringing the student in contact with economic, political, and social reality continue to be inadequate. Legislative problems do not receive the attention they deserve. Contentment with analyzing the substantive law and the methods of procedure as expounded by the appellate courts continue to characterize the greater part of our teaching. Even where the will to do better prevails, the means are lacking. If, as seems to be conceded, we do well enough in imparting the doctrines of substantive law and the formal rules of procedure, it is clear that we need far better teaching in regard to history, human psychology, social and economic problems, and the actual operation of legal institutions. The task of effecting the necessary changes in our legal education is tremendously difficult. It contains at least three elements:

[3] The Clinical-Lawyer School—the Clinic (1934), 83 U. Pa. L. Rev. 1.

[4] In that training, of course, the study of law from a scientific point of view is the most essential element.

[5] Sunderland, The Law School and the Legal Profession (1931), 7 Amer. L. School Rev. 93; Harno, Social Planning and Perspective Through Law (1933), 7 Amer. L. School Rev. 705.

1. Obtaining additional information by research, especially into the functioning of trial courts and administrative agencies;

2. Inter-weaving factual data with traditional legal materials for teaching purposes; and

3. Effecting an organized view of law and its functioning, through jurisprudential study.

Satisfactory legal training along these new lines involves the use of an enormous volume of material. The utmost economy of time and effort on the part of teacher and students is absolutely essential. Close study of printed materials affords by far the most efficient method of becoming acquainted with reality—provided, of course, the printed materials reflect reality with a sufficient degree of accuracy. Three years of undivided attention to such materials in a law school seems not too much to acquaint the student with the complex, changing world into which he must enter. The world can to a large extent be brought into the classroom and the library. It is at best doubtful whether, while it is being examined there, the examiner can afford to expend a portion of his energy in first-hand contact with the transactions of men. This is the more true when he must inevitably be plunged into these transactions at a time not far removed, after which there will be little opportunity for study and reflection. The wisdom which the student needs to acquire and the synthesis which he needs to effect are more fundamental and far-reaching than can be attained on the basis of a few practical problems in the legal aid clinic. A synthesis of experience in petty cases is no substitute for intellectual mastery. Professor Bradway does not intend it as such; but the diversion of attention from the main task may be an important obstacle to its successful performance.

The analogy of clinical work in medical education is often drawn. Its validity may be doubted. The medical student in the clinic is not concerned with office or hospital routine or with the human side of individual cases. His concern there is with certain techniques that are fundamental to his understanding of his art. They are techniques which cannot be imported into the classroom or the laboratory. Many of the corresponding legal techniques, such as the art of pleading and the drafting of legal instruments, can be brought into the classroom. Some of the most important legal techniques, such as that of the trial of cases, cannot be performed by students who are not yet members of the bar. It is only in what Professor Bradway calls "planning a campaign" and in such matters as interviewing clients and witnesses that the legal clinic affords experience which the classroom and the library cannot afford.

Medical interneship is more nearly analogous than experience in medical clinics to the work of the legal aid clinic. Medical interneship, of course, follows the medical curriculum proper. The analogy points to a similar solution of the problem of introducing practical experience into the training of the lawyer. Nor must we expect too much of it even in its place. Even with their clinical and interning experience, the products of medical schools do not give evidence of unusual social vision or medical statesmanship. Intellectual horizons are not broadened or social sympathies fundamentally deepened by human contacts of the everyday variety nearly so much as by well-directed thought and study. If the legal aid clinic is to be accorded the right to invade academic enclosures, it must demonstrate definitely its claims to the intellectual and moral stimulation of students, or at least show that it will not interfere with the broader and deeper aspects of their training.